IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.942 OF 2005

Smt.Shantabai Dattoba Sutar (Manmode)
and Anr. .. ..Appellants
Versus
Mr.Sundarlal Ratnakar Aswale .. ..Respondent

Mr.R.S.Apte with Mandar Limaye for appellants

CORAM : P.V.KAKADE, J.

DATE : 28TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Pune dated 7.12.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge,Junior Division, Pune dated 24.6.1996 dismissing the plaintiffs' suit for possession of the suit property.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for possession of

the suit property claiming that he is owner of the suit property and defendant is a tenant is one room premises admeasuring 15 x 10 feet. According to the plaintiffs the defendant encroached upon the open land belonging to the plaintiffs by constructing shed admeasuring 12 x 10 feet to the eastern side of the room let out and enlarged the size of the room let out by 2 x 15 feet towards the north side and therefore, the suit came to be filed to seek possession of the encroached suit premises.

. The defendant contested the suit on the ground that he is tenant to the extent of 25 x 12 feet and not only 15 x 10 feet room. In support of his version he has produced rent receipts of the year 1962 and on such count the suit was sought to be dismissed.

4. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiffs failed to prove that the tenanted premises in possession of defendant admeasuring 15 x 10 feet only and defendant had constructed a shed to the extent of 12 x 10 feet encroaching upon the plaintiffs' property and as such

the suit was dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

5. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. Perusal of the judgments of both the courts below definitely shows that the plaintiffs have come with specific case that the tenanted premises was 15 x 10 and the rest of the premises was encroached upon by the defendant. Further this aspect was negated by documentary evidence Exh.43 and 44 i.e. rent receipts issued by plaintiffs in favour of the defendant as early as in the year 1962, which shows the area of 25 x 12 feet was the area mentioned in the rent receipt and he is tenant therein. In short the plaintiffs have not proved in any manner whatsoever that the tenanted premises was only 15 x 10 feet. It was sought to be submitted that there was earlier suit between the parties and the plaintiffs-landlord had filed the suit for eviction of the defendant-tenant for commission of default in payment of rent, as he was in arrears of

payment for more than six months and in that case the issue of tenancy came to fore, however, the factum of earlier litigation would not be of any help to the plaintiffs in this case mainly due to the reason that the issue involved in that suit was regarding default in payment of rent and did not include the issue regarding disputed area of extent of suit premises. Under the circumstances, the earlier dispute and its related documents will not be of any help to the plaintiffs-appellants. In view of this position, I concur with the findings recorded by both the courts below to hold that the plaintiffs failed to prove that there was encroachment on the suit property and as such hold that this appeal has no merits and therefore it stands dismissed.